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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,652	03/29/2004	Daniel J. Hill	JFMZ 2 00170	2455
27885	7590	10/25/2005	EXAMINER	
FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP 1100 SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44114			ARK, DARREN W	
			ART UNIT	PAPER NUMBER
			3643	
DATE MAILED: 10/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/811,652	Applicant(s) HILL, DANIEL J.	
	Examiner Darren W. Ark	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10,12,13,17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12,13,17 and 19-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on 9/16/2005. These drawings are accepted by the Examiner.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the term "a stake" is not mentioned in the specification (posts 32 were mentioned in the specification).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 3-10, 12, 13, 17, 19-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the phrase "a second opening in said at least one wall..." renders the claim vague and indefinite since it can be interpreted that the same "at least one side wall" has both the first and second openings which is not the case. Instead, there are two side walls which have the first and second openings respectively.

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In regard to claim 6, the phrase "the first opening comprises a notch removed from a bottom portion of the trigger plate" renders the claim vague and indefinite since the first opening was previously set forth in claim 1 as being in the at least one side wall, not the trigger.

In regard to claim 9, the phrase "a floor plate opening disposed adjacent at least one of said entry opening and said second opening" renders the claim vague and indefinite since the floor plate opening was only disclosed as being adjacent the entry opening.

In regard to claim 22, the term "a stake" renders the claim vague and indefinite since posts (32) of the desired invention do not necessarily have pointed ends typically found in stakes.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3, 5, 6, 9, 10, 12, 13, 17, 19-26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Leyerle et al. 6,397,517.

Leyerle et al. discloses a frame with an upper wall (26), at least one side wall (34, 38, 40, 58), a first opening (one of 30) and a second opening (other of 30); a striker (88) with no portion extending beyond an exterior surface of the frame; a biasing member

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(92) for biasing the striker away from the upper wall (88 is biased downwardly); a set lever (portion interacting between 88 and 94) for retaining the striker adjacent the upper wall (when 88 is open position); a trigger (94) connected to the striker via the lever (inherent that the connection between the striker and trigger is via the lever) and connected to the frame (via 84, 86), wherein the trigger is positioned such that the burrow appears uninterrupted between the first and second opening (nothing substantially blocking or obscuring the path between the openings 30); a floor (44), wherein no components extend upwardly from the floor generally along a line that intersects the first and second openings (clear between 30) such that the burrow appears uninterrupted between the first and second opening (nothing substantially blocking or obscuring the path between the openings 30).

In regard to claim 3, Leyerle et al. discloses the trigger comprising a trigger plate (94) pivotally mounted to the upper wall (94 is pivotally mounted to 26 via its connection with trap base 80 and its connection to the housing via 84, 86).

In regard to claims 5, 6, and 17, Leyerle et al. discloses the trigger plate including an opening (space between 88 and 80 or spaces between 90).

In regard to claims 20 and 21, Leyerle et al. discloses an aperture (46) aligned with the first opening (one of 30) in the at least one side wall (a line can be drawn between them) and a pin (45) in the aperture.

In regard to claim 9, Leyerle et al. discloses positioning a trap along an animal's run (see col. 2, lines 60-end & col. 3, lines 1-3), the trap including a housing (22, 24) with an entry opening (one of 30), a second opening (other of 30), an upper wall (26), a

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striker (88) biased toward a floor of the run (32), a set lever (portion of 78 acting between 88 and 94), and a trigger (94); retaining the striker towards the upper wall (88 is urged and maintained in an orientation that directs it toward 26); positioning the trigger (94) in the path of the animal's run (animal's run includes path between 30 and also includes 56) such that the animal's run appears uninterrupted between the entry opening and second opening (free path between 30); positioning a floor plate (44) below the upper wall (26), the floor plate including a floor plate opening (46) adjacent ("adjacent" is a relative term) the entry opening and the second opening; and inserting a pin (45) into the floor plate.

In regard to claim 22, Leyerle et al. discloses a stake/post (84, 64, or another other protrusion); a bottom wall (44); a pin (45); a striker (88) connected to the top wall (connected to 26 via 84, 86); a biasing member (92); a set lever (portion of 78 acting between 88 and 94); and a trigger (94).

In regard to claim 23, Leyerle et al. discloses 4 stakes (small rectangular projections located at each corner; see Fig. 2).

In regard to claim 24, Leyerle et al. discloses the bottom wall being narrower than the top wall (44 is more flat than 26 thus more narrow).

In regard to claim 25, Leyerle et al. discloses the bottom wall being longer than the top wall (44 has a flat portion which is longer than the flat portion 98 of 26).

7. Claims 1, 3-7, 20, 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Great Britain Pat. No. 2332356 to Blythe.

Blythe discloses a frame with an upper wall (top of 24 & 22), at least one side wall (5, 27, lateral walls in Fig. 3 running longitudinally, part of 24), a first opening (4, 23) and a second opening (arcuate slots 26; the second opening is not being particularly claimed and the perception of the animal is based on the fact that light is capable of passing through the opening); a striker (bail arm 16) with no portion extending beyond an exterior surface of the frame (although pegs 20 extend, bail 16 does not); a biasing member (15) for biasing the striker away from the upper wall (16 is biased toward position A in Fig. 4); a set lever (17) for retaining the striker adjacent the upper wall (position B in Fig. 4); a trigger (13) connected to the striker via the lever (17) and connected to the frame (via 14), wherein the trigger is positioned such that the burrow appears uninterrupted between the first and second opening (nothing substantially blocking or obscuring the path between the openings); a floor (1, 2), wherein no components extend upwardly from the floor generally along a line that intersects the first and second openings (a line can be drawn between 4, 23 & 26) such that the burrow appears uninterrupted between the first and second opening (nothing substantially blocking or obscuring the path between the openings).

In regard to claim 3, Blythe discloses the trigger comprising a trigger plate (13) pivotally mounted to the upper wall (13 is pivotally mounted via 14 to sidewalls which are in turn connected to the top wall).

In regard to claims 5 and 6, Blythe discloses the trigger plate opening (defined rearwardly of 17 and between 17 and 13).

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In regard to claim 20, Blythe discloses an aperture (25) aligned with the first opening (4, 23) and a pin (27; pin not being particularly claimed) received in the aperture.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5, 6, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leyerle et al. 6,397,517 in view of Vajs et al. 4,665,644.

Alternatively, Leyerle et al. does not disclose the trigger plate with an opening dimensioned to receive the head of a small animal. Vajs et al. discloses a trigger plate (40) with an opening (44) dimensioned to receive the head of a small animal (see Figs. 4, 5). It would have been obvious to a person of ordinary skill in the art to modify the trigger plate of Leyerle et al. such that it has an opening dimensioned to receive the head of a small animal in view of Vajs et al. in order to provide a bait receptacle which can hold a sufficient amount of attracting bait and which will cause the animal to move a majority of its body into the trap so that the trap can engage a large proportion of the animal and therefore it is less likely to become free.

10. Claims 5, 6, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Great Britain Pat. No. 2332356 to Blythe in view of Vajs et al. 4,665,644.



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Alternatively, Blythe does not disclose the trigger plate with an opening dimensioned to receive the head of a small animal. Vajs et al. discloses a trigger plate (40) with an opening (44) dimensioned to receive the head of a small animal (see Figs. 4, 5). It would have been obvious to a person of ordinary skill in the art to modify the trigger plate of Blythe such that it has an opening dimensioned to receive the head of a small animal in view of Vajs et al. in order to provide a bait receptacle which can hold a sufficient amount of attracting bait and which will cause the animal to move a majority of its body into the trap so that the trap can engage a large proportion of the animal and therefore it is less likely to become free.

### ***Allowable Subject Matter***

11. Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leyerle et al. 6,415,544 discloses a rodent trap with a striker (24); a set lever (74, 84), and a trigger (26); French Pat. No. 2,730,382 to Guinoiseau discloses a trap which is fixed to the ground via pegs (20); Botsford 674,669 discloses a trigger plate (h) with an opening (h<sup>3</sup>).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA